IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 5644 (S/S)01
(Old no. 26084 of 2000)

Surendra Singh S/o Sri Kundan Singh,
R/o A-69, Shivalic Nagar, B.H.E.L.,
Ranipur, Haridwar. ---- Petitioner.

Vs.

1. Bharat Heavy Electrical Limited,
   Seeri Fort, Khelgaon, New Delhi-110049,
   Through its Managing Director,
2. Bharat Heavy Electrical Limited,
   Ranipur Haridwar-District Haridwar,
   Through its Acting/ Executive Director,
3. Senior Administrative Officer (Personal),
   Bharat Heavy Electrical Limited,
   Ranipur Haridwar-District Haridwar. ---- Respondents.

Sri N. C. Gupta, learned counsel for the petitioner.
Sri Rakesh Thapliyal, learned Counsel for B.H.E.L / respondent.

Hon'ble M.M. Ghildiyal, J.

Heard Sri N.C. Gupta learned counsel for the petitioner and Sri Rakesh Thapliyal, learned counsel for the Bharat Heavy Electrical Limited/ respondents.

By means of this writ petition, the petitioner has prayed for the following reliefs:

i. Issued a writ, order or direction in the nature of certiorari quashing the impugned order dated 29.10.1998 and 12.08.1998 (annexure nos. 1 and it's a) passed by the respondent no. 3,

ii. Issue a writ, rule, order or direction in the nature of mandamus commanding the respondents to consider

the case of petitioner for service in B.H.E.L. on the post of technician till actual retirement.

iii) Issue any other writ or direction in the nature of justice be passed in favour of the petitioner,

iv) Award the costs of the petition to the petitioner.

Brief facts of the case, as narrated in the writ petition, are that the petitioner was appointed with the respondents' Department on 28.11.1967 as Technician Staff no. 1537520. Due to inadvertence the date of birth of the petitioner furnished at the time of joining the service shown as 5th September 1937 on official record in place of 26th August 1945. In the year 1990, on the basis of School Leaving Certificate (T.C.), which was issued by the govt. Primary School Chamba Khuj Post- Koot Mohammad Khan district Amritsar, the petitioner's date of birth was duly changed by the official of the respondents in the official records. In this regard the Department sought verification from the concerned School, and after inquiry the date the birth of the petitioner was ascertained as 25th August 1945. Subsequently, false allegation was made against the petitioner with the allegation that the petitioner somehow managed to alter the official records regarding his date of birth. The petitioner is semi literate, thus he could not produced any documentary evidence regarding his date of birth at the time of his appointment. The petitioner was medically examined by a doctor at the time of his appointment, but the doctor has given wrong advice to the Department and accordingly, the Department has recorded his date of birth as 05.09.1937. Consequently the respondents passed order impugned on 29.10.1998 by which the name of the petitioner was struck off from the rolls of the Company and he was treated to be retired.

It is contended that according to official records of the Company the petitioner should have been retired in the year 1995 itself, but the petitioner was retired on 29.01.1998, which indicate that the respondents themselves were not sure about the exact date of birth of the petitioner. It is contended that the respondents have done wrong assessment in recording his date of birth.

An enquiry is contemplated against the petitioner, but the petitioner has not been provided any opportunity of hearing instead they passed the impugned order on conjunctures and surmises.

It is further contended by learned counsel for the petitioner that the date of birth of petitioner, which was proved by the petitioner by annexing no. 4 (photo state copy of Medical Officer in which his date of birth has been mentioned as 26.08.1945) and annexing Annexure no. 4-A (the photo state copy of identify card issued by the Department showing that his date of birth is 26.08.1945) is established as 26.08.1945 consequently his superannuation, after completion of 58 years of age, should have been in the year 2003 instead of 1995.

The respondents on 29.01.1998 have passed the impugned order which reads as under:-

Sri Surendra Singh, Staff no. 1537520, Technician joined BHEL Haridwar on 28.11.1967. At the time of joining he furnished on official records his date of birth as 5th September 1937. Since he did not produce any confirmatory documentary evidence in support of this date e.g. School Leaving Certificate or birth certificate from Municipality etc., his date of birth was assessed by the Authorized Company's Medical

Officer and in the medical assessment also his date of birth came to be the same i.e. 5th September 1937. As per Company rules, date of birth of the employees who do not have the School Leaving Certificate etc., at the time of joining, is assessed by the authorized Company's Medical Officer. Accordingly, Sri Surendra Singh's date of birth continued to be 5th September 1937 in the official record and the same was very well known to the individual. He also maintained the same date of birth subsequently.

Sri Surendra Singh served the company for more than 23 years and at the fag end of his service he submitted the School Leaving Certificate dated 24.07.1990 in which his date of birth was recorded as 26th August 1945. On the basis of this certificated Sri Surendra Singh somehow managed to get his date of birth changed in the official records, securing a benefit of about eight years, for which action against the concerned official is contemplated.

As per Company Rules, the date of birth entered in the personal records of an individual at the time of his first appointment cannot be altered except in case of clerical error. According to these Rules, the date of birth of Sri Surendra Singh which was initially recorded as 5th September 1937 should not have been changed as there was no clerical error. Later, on a close examination of the School Leaving Certificate dated 24.07.1990 the following discrepancies/contradictions came to light:-

1. *The date of entry in the School as per School Leaving Certificate dated 24.07.1990 signed by Sri Kashmiri Lal, Headmaster is 11.06.1952 while the date of entry in the School as per the certificate dated 30.09.1996 issued by the same Headmaster is 12.11.1951 and still again the date of entry in the School as per Register*

"Dakhal-Kharij" is 12.04.1958 as endorsed by the same Headmaster on the photocopy of the register whereas in the attestation from Sri Surendra Singh has mentioned that his year of entry and leaving the School were 1946 and 1951 respectively.

2. *The date of striking off the name as mentioned in the School Leaving Certificate dated 24.07.1990 is student the School till 31st March 1953 was struck off as late as 24.06.1990. Further, as aforesaid, Sri Surnedra Singh had declared in his attestation form at the time of joining that he left the School in 1951.*
3. *At the time of recruitment Sri Surendra Singh declared that he had studied upto 5th Class while as per School Leaving Certificate dated 24.07.1990, he studied only in Class 1st.*

In view of the above discrepancies/contradictions with regard to the School Leaving Certificate, the said certificate cannot be called to be genuine one thus relied upon.

In connection with above, Sri Surendra Singh was asked vide our letter no. PWX/OC/1537520 dated 16/20.12.1997 to explain his positions. His explanation dated 29.12.1997 has not been found satisfactory. The cases mentioned by Sri Surendra Singh are being examined separately. However, they don't have any relationship with the change of his date of birth in the official record.

As per the original date of birth i.e. 05.09.1937 Sri Surendra Singh should have been superannuated on 24.09.1995 (under Rule 4 of the General Terms & Conditions of Service in personnel Manual) after attaining the age of 58 years but he continued to work after 24.09.1995 on the basis of invalid certificate submitted by him.

In view of the above, Sri Surendra Singh, Staff No. 1537520, by virtue of this order stands superannuated w.e.f. 24.09.1995 under the above Rule.

For the period he has actually worked thereafter, he has already been paid wages etc.

Accordingly, the name of Sri Surendra Singh, Staff No. 1537520 stands struck off from the rolls of the Company. He may collect his wages from cash counter on or after 31.01.1998 till 10.02.1998.

On the contrary, Sri Thapliyal, learned counsel for the respondent- Company has vehemently refuted the arguments advanced by the learned counsel for the petitioner and submitted that the petitioner has altered the official records regarding his date of birth for which an enquiry is contemplated. The respondents, in absence of any documents, conducted medical examination of the petitioner for ascertaining his age from the Company's Authorised Doctor at the time of joining with the Company, who had assessed his date of birth as 5th September 1937 and on the basis of doctor's assessment in regard to the birth date of the petitioner the respondents passed the impugned order striking off the name of the petitioner from Company' s roll after completion his age of superannuation, which is entirely based upon the Rules and the records available with the respondents Department.

The documents, on which the petitioner is relying are the photo state copies, therefore nothing can be observed on the basis of such documents. Significant to say that at the fag end of his service, the petitioner has produced documents in respect of his date of birth, to this extent he did not make efforts to approach to the respondent's Authorities seeking correction on

the entry of his date of birth. In absence of any documents regarding date of the birth of an employee, the Department has no alternative remedy to seek advice of the doctor who assessed the date for birth of the petitioner as 05.09.1937. thus, the initial entry of date of birth in the employer's records shall be relevant for reckoning date of superannuation of an employee, in case the person concerned did not pass or appear in the High School Examination. The respondents in the order impugned have categorically stated that petitioner's date of birth was ascertained by the Company's Authorised doctor. At the initial stage when the petitioner joined the Company, he did not contested and even did not file any objection, regarding the entry of his date of birth in Company's official records. The respondent's authorities also found discrepancies and contradiction in the School Leaving Certificate, produced by the petitioner that too in the year 1990, to this extent the petitioner never contested with the entry of his dated of birth in the Company's service records. In these circumstances, this Court is of the view that the impugned order does not warrant any interference by this Court. No other ground was pressed before me. Hence, the petitioner lacks merit and is liable to be dismissed.

Accordingly, the writ petition is dismissed. No order as to costs.

(M.M. Ghildiyal)

August 18, 2007:
NCM: